

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN PHET,
Petitioner,

v.
THE STATE OF WASHINGTON
Respondents.

Case No. C07-5493RBL

ORDER TO AMEND, AND
ORDER DENYING COUNSEL

This habeas corpus petition has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636 (b)(1)(B) and Local Magistrates' Rules MJR 3 and MJR 4. Petitioner seeks federal habeas corpus relief pursuant to 28 U.S.C. § 2254. (Dkt. # 5). Petitioner names the State of Washington as respondent. 28 U.S.C. § 2243 indicates that writs are to be directed "to the person having custody of the person detained". This person typically is the superintendent of the facility in which the petitioner is incarcerated. Failure to name the petitioner's custodian deprives federal courts of personal jurisdiction. Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). Information in the petition shows petitioner is housed at an out of state facility but is a Washington inmate. The Secretary of the Department of Corrections, Harold Clark, or the superintendent of the out of state facility would be the proper respondents.

ORDER

1 Petitioner is ordered to file an amended petition naming the proper respondent. The new
2 petition or motion must be filed on or before **December 7, 2007** or the court will recommend
3 dismissal of this petition on jurisdictional grounds.

4 Petitioner has filed a “memorandum in support of appointment of counsel” (Dkt. # 6). There
5 is no right to have counsel appointed in cases brought under 28 U.S.C. § 2254 unless an evidentiary
6 hearing is required, because the action is civil, not criminal, in nature. See Terravona v. Kincheloe,
7 852 F.2d 424, 429 (9th Cir. 1988); Brown v. Vasquez, 952 F.2d 1164, 1168 (9th Cir. 1992); and
8 Rule 8(c) of the Rules Governing Section 2254 Cases in the United States District Courts. An
9 evidentiary hearing has not been granted in this case. Further, the claims in the petition are adequately
10 set forth and articulated. Petitioner's motion for appointment of counsel (Dkt. # 6) is therefore
11 **DENIED**.

12 The clerk is ordered to send copies of this order to the petitioner.

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14 DATED this 22 day of October, 2007.

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/S/ J. Kelley Arnold

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J. Kelley Arnold

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United States Magistrate Judge

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ORDER